IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(*Special Original Jurisdiction*)

THURSDAY, THE TENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

WRIT PETITION NO : 12156 of 2005

Between:

M.Sudarshan, S/o.Sri M.Bhoomaiah,
Gram Panchayath, Mallial (Under removal),
Karimnagar Dist.

..... PETITIONER

A N D

1 The District Collector, (Panchayats) Karimnagar.
2 The Government of A.P., rep.by its Secretary to Government, Panchahyat Raj & R.D.Department, AP Secretariat, Hyderabad.

..... RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of a writ of Mandamus declaring the action of the second respondent in not passing any orders in the appeal filed on 18-5-2005 by the petitioner against the order of the first respondent removing the petitioner from the post of Sarpanch, Mallial Gram Panchayat of Karimnagar District vide the first respondent's proceedings No.A1/2530/04-pts dt.6-5-2005 as arbitrary and illegal and consequently direct the second respondent to pass orders on the appeal filed by the petitioner and further direct the respondents to continue the petitioner as Sarpanch, Mallial Gram Panchayat of Karimnagar District till the disposal of the appeal dated 18-5-2005 filed by the petitioner before the second respondent and pass such other order or orders,

as this Hon'ble court may deem fit and proper.

Counsel for the Petitioner: MR.S.SATYAM REDDY

Counsel for the Respondents.: GP FOR PANCHAYAT RAJ & RURAL DEV.

The Court made the following : (order follows second page)

O R D E R

The case of the petitioner is that he was elected as Sarpanch of Mallial Gram Panchayat in August 2001. Further the petitioner was elected as Sarpanch for more than 24 years. The Gram Panchayat Mallial is a major notified Panchayat and it has a full-fledged Executive Officer, which is now redesignated as Panchayat Secretary and has a considerable number of staff members; viz., Junior Assistant, Clerk-cum-Bill Collector, Bill Collectors, Sanitary Personnel, Pump mechanic etc.

The petitioner submits that he belongs to Telugu Desam Party and during recent elections, he was asked to resign from Telugu Desam Party and join other political party to support the Congress Party. However, due to his long association with Telugu Desam Party he did not accede to their request and worked for the success of Telugu Desam Party. While so, the first respondent issued a show cause notice no.A1/2530/2004-Pts dated 18-8-2004, under section 249 (6) and 252 of A.P.Panchayayat Raj Act, 1994 alleging that the staff of Gram Panchayat had misappropriated some funds and as an administrative Head, he did not take any action that some ineligible persons have been recommended for old age pensions and therefore, failed to discharge his duties and he was called upon to show cause as to why he should not be suspended. In response to the show cause notice, the petitioner submitted his reply on 07-9-2004 stating that he is in no way responsible

for the allegations and it is the duty of the Executive Officer to run the administration. As far as the allegation of about issuing identity cards to ineligible persons for sanction of old age pensions is concerned, the petitioner submitted that he is not the authority to grant the old age pensions and that 56 beneficiaries were selected by the nodal team and he had merely forwarded applications of two such persons for grant of old age pensions and it is for the Mandal Parishad Development Officer concerned to check and sanction the pension. The petitioner submits that as a public representative he had forwarded the said applications. But issuing of identity card is concerned it was issued for the purpose of identification of the persons and requested to drop further action.

The learned counsel for the petitioner submits that Section 30 of the A.P. Panchayat Raj Act envisage that for every Gram Panchayat there should be an Executive Officer, which is now re-designated as Panchayat Secretary and Section 31 and 32 of the Act, the Executive Officer shall have control on all the Officers and servants of the Gram Panchayat. The petitioner submits that the only allegation if any that could be found in the suspension order is about the recommendation of persons for grant of old age pensions and it was within the petitioner's power being a public representative and for such acts, he is protected under section 257 of the Act. When there is no appeal against the order of suspension, the petitioner filed WP.No.16968 of 2004 and this Court granted interim order on 22-9-2004. Thereafter, the writ petition was dismissed on 18-2-2005 holding that the allegations against him are required to be enquired into, since the petitioner got alternative remedy of revision before the Government in view of judgment dated 09-12-2004 in WA.No.1989 of

2004. Aggrieved by the same, the petitioner filed WA.No.389 of 2005, which was dismissed on 10-3-2005. Thereafter he filed review WAMP.No.1575 of 2005 and the same was disposed on 15-4-2005 and this court has taken notice of the fact that he filed a revision before the Government and the same was dismissed vide GO.Rt.No.592, P.R. & R.D. (Pts-II) Department, dated 2-4-2005 and it shall be open to the petitioner to take appropriate legal steps as are open to him and that the same shall be considered uninfluenced by the orders passed in WA.No.389 of 2005.

The learned counsel for the petitioner submits that he filed revision before the Government and the Government through its Memo.No.135540/Pts-II/2004-2, dated 22-3-2005 has stayed the suspension orders passed by the first respondent. Thereafter, the Government proceeded to dismiss the revision by an order dated 2-4-2005 even without hearing either the petitioner or his counsel. The Government stated in the G.O. that the petitioner misappropriated a sum of Rs.53,780/- which is totally false. When the review was dismissed on 02-4-2005 by the Government, the first respondent placed him under suspension through order in RC.No.A1/25364/A/Pts dated 02-4-2005. Aggrieved by the order of the Government, dated 02-4-2005 in dismissing the revision, he filed WP.No.9073 of2005 before this court and the same was admitted.

While things stood thus, the learned counsel for the petitioner further submits that against the order of removal passed by the first respondent he filed WP.No.11080 of 2005 and this court granted interim order on 10-5-2005 and thereafter disposed of the same on 17-5-2005 by suspending the order of removal for a period of three weeks and directing him to file an appeal before the second respondent.

Accordingly, he filed an appeal along with stay petition on 18-5-2005 before the second respondent but so far no orders have been passed. Pursuant to the orders dated 17-5-2005 passed by this court, the first respondent through proceedings No.A1/2530/Pts dated 23-5-2005 has reinstated him as sarpanch for a period of three weeks only. The petitioner further submits that he has been representing to the second respondent to take up his appeal but the appeal and the stay petition are not being heard and therefore, he filed this writ petition to declare the action of the second respondent in not passing any order in the appeal filed by the petitioner on 18-5-2005 against the order passed by the first respondent in removing him from the post of sarpanch, Mallial Gram Panchayat of Karimnagar district through Proceedings No.A1/2530/04-Pts, dated 06-5-2005 as arbitrary, illegal and consequently to direct the second respondent to pass order on the appeal filed by him and also to continue the petitioner as Sarpanch of Mallial Gram Panchayat of Karimnagar district till disposal of the aforesaid appeal.

The learned Govt.Pleader for Panchayat Raj and Rural Development submitted that on the basis of reports from the Panchayat Secretary, Gram Panchayat, Mallial and Project Director, DRDA, Karimnagar Lr.No.B10/B5/801/2001, dated 29-7-2004, a show cause notice dated 18-8-2004 has been issued to the petitioner on the ground that he had misappropriated the amount collected towards tap connection deposits and also old age pensions has been paid to the ineligible persons by selecting un-authorisedly without approval of nodal team and directed him to submit his explanation as to why action should not be initiated under section 249 (6) and 252 of the A.P.Panchayat Raj Act for the above irregularities committed by him. Thereafter,

the petitioner submitted his explanation on 7-9-2004 refuting the allegations made against him. When his explanation was found not satisfactory, he was placed under suspension through proceedings no.A6/2630/04-Pts, dated 11-9-2004. Assailing the said order, he filed WP.No.22253 and WP.No.16968 of 2004 and this court through order, dated 22-9-2004 has suspended the proceedings dated 11-9-2004. Thereafter, the petitioner has been reinstated through proceedings dated 02-10-2004. Subsequently when WP.No.16968 of 2004 was dismissed on 18-2-2005, he was again placed under suspension through Proceedings dated 24-2-2005.

The learned Govt.Pleader further submits that against the orders dated 11-9-2004 of the Collector (PW) Karimnagar, the petitioner has filed Revision before the Government and the Government through Memo.No.135540 (Pts-II) A1/2004-1, dated 22-3-2005 has suspended the aforesaid orders of the Collector and permitted him to continue as Sarpanch of Mallial through proceedings dated 24-3-2005.

Now the learned Govt.Pleader seeks to contend that as per the report of the Project Director, DRDA, Karimnagar, 191 old age pensioners, 17 weaver pensioners were allotted to Mallial Gram Panchayat but the amount was distributed by the Sarpanch to the pensioners by filling the death vacancies by issuing identity cards to ineligible persons without approval of nodal team. The petitioner has identified ineligible persons un-authorisedly in place of vacancies caused due to death pensioners, issued identity cards and paid the pension amounts to them without approval of the nodal team. Therefore, the petitioner has exercised powers, which are not vested in him in issuing identity cards and making payment of pension un-authorisedly to 24 members. Further he has misappropriated an amount of Rs.53,780-00 which was

collected towards deposits of tap connections in the village.

Pursuant to the orders passed by the Government in GO.Rt.No.592, dated 02-4-2005, the District Collector, Karimnagar through proceedings dated 11-9-2004 dismissed the revision filed by the petitioner and vacated stay orders issued in Government Memo dated 22-3-2005 and accordingly the Upa-sarpanch was placed in charge to perform the duties of sarpanch through proceedings dated 02-4-2005. Further the petitioner has been issued a show cause notice under section 249 (1) of the Act, calling upon him to submit his explanation as to why he should not be removed from the post of Sarpanch. In response to the show cause notice, the petitioner submitted his explanation to the show cause notice denying all the allegations made against him. When the explanation of the petitioner was found to be not satisfactory and it is against the orders dated 02-4-2005, which clearly emerges that the charges are held proved for which he is held responsible.

Heard the learned counsel for the petitioner as well as the learned Govt.Pleader for Panchayat Raj and Rural Development.

The petitioner was removed from the post of Sarpanch mainly on two grounds; firstly, he was misappropriated the amount collected towards tap connection deposits; secondly, old age pensions has been paid to the ineligible persons by selecting unauthorisedly without approval of nodal team. After going through the material placed before this court and as well as the impugned order, it appears that earlier the petitioner filed WP.No.11089 of 2005 seeking to declare the

action of the District Collector (Panchayats) Karimnagar in removing him from the post of Sarpanch, Mallial Gram Panchayat of Karimnagar district through proceedings NO.A1/2530/04-Pts, dated 06-5-2005 as arbitrary and illegal and set aside the same. This court while disposing of WP.No.11089 of 2005 directed the petitioner to avail the alternative remedy of appeal before the Government within a period of three weeks from date and thereafter, the appeal shall be disposed of by the respondents, in accordance with law, after giving reasonable opportunity to the petitioner. Till then, the impugned order dated 06-5-2005 is suspended for a period of three weeks only.

After hearing the learned counsel for the petitioner and the learned Govt.Pleader for respondents and on perusing the impugned order, it appears that except issuing show cause notice and calling for the explanation of the petitioner, no enquiry was conducted with regard to the allegations made against the petitioner. Be that as it may, taking into consideration the fact that as this court already suspended the order dated 06-5-2005 in WP.No.11089 of 2005 and without going into the merits of the case, I deem it appropriate to direct the second respondent to consider and dispose of the appeal filed by the petitioner under section 249 (7) of A.P.Gram Panchayat Act, 1994 on merits and in accordance with law after affording reasonable opportunity to the petitioner and till then the impugned order dated 06-5-2005 is suspended.

With the above direction, the writ petition is disposed of. No costs.

10th JUNE, 2005. ----------

I S L. ELIPE DHARMA RAO, J.

To

1) 2 CD copies.

2) 1 CC to MR.SATYAM REDDY

3) The District Collector, (Panchayats) Karimnagar.
4) The Government of A.P., rep.by its Secretary to Government, Panchahyat Raj

& R.D.Department, AP Secretariat, Hyderabad.